

Risk Management Through Credible Background Checks

Identifying Risks (which may affect agency, volunteers, and/or persons receiving care or other services)

- Accidents
- Serious injury
- Volunteers stepping outside of job descriptions
- Substandard performance of volunteers, resulting in harm to clients, event participants or the public
- Breach of confidentiality
- Volunteers inappropriately speaking for, or misrepresenting the organization
- Loss or damage to property
- Theft or misappropriation of funds
- Abuse of clients (physical, emotional, sexual, or financial)
- Loss of agency reputation, organizational credibility, or public trust
- Loss of ability to raise funds or recruit volunteers in the future

Importance of Due Diligence in all aspects of volunteer management

One definition of Due Diligence...

"A measure of prudence, activity, and care, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent person under the particular circumstances; not measured by any absolute standard but depending on the relative facts of the situation."

Due Diligence should be reflected in the agency's

- Policies
- Recruitment
- Screening (application, interviews, background checks, etc)
- Hiring
- Training
- Supervision

Three-Step Approach for Determining the Appropriate Screening of Persons who will be working with Vulnerable Populations (OJJDP)

- 1. Assess the setting in which care is provided**
 - the amount of contact an employee or volunteer will have with the person receiving care (or services)
 - the vulnerability of the person receiving care (or services)
- 2. Evaluate the diverse contingencies that could affect screening decisions.**
 - Turn-around time
 - Availability of information needed
 - Others?
- 3. Analyze and select the appropriate level of screening for the position in consideration (i.e., "screen for the position")**

Federal Legislation (or Proposed Legislation) Related to Criminal History Record Checks of Volunteers and Employees

The National Child Protection Act of 1993:

- Mandates that an “authorized criminal justice agency” of the state shall report or index child abuse crime information in the National Criminal History background check system.
- Authorizes a state to establish procedures requiring organizations serving youth, the elderly, and individuals with disabilities (referred to as *qualified entities*) to request a nationwide criminal history background check on prospective employees and volunteers
- Provides access to the National Criminal History Records system maintained by the FBI in order to perform these criminal history record checks. Access is limited to the states that have enacted authorizing legislation.
- Establishes minimum procedural guidelines for conducting criminal history checks
- Places responsibility on the states to identify the positions that will require criminal history background checks
- Shields organizations from liability “solely for failure to conduct a criminal history background check”
- Limits the cost of criminal history record checks so that “fees to non-profit entities for background checks to not discourage volunteers from participating in child care programs”
- Does not mandate fingerprinting

Volunteers for Children Act (1998)

- In response to a general lack of enabling legislation among most states
- VCA relieved the state of the necessity to enact legislation; instead, “Qualified Entities” identified by state could contact state to request national fingerprint-based checks
- Loophole: state under no obligation to grant “Qualified Entity” status
- Fingerprint checks not required

Proposed Legislation: Biden and DeWine Senate Bills (2001)

- DeWine bill proposed to tweak NCPA

- Biden bill proposed establishment of a National Center for Volunteer and Provider Screening and a task force to oversee the Center's work
- Compromise bill developed in May 2002

Senate Bill 1868 (October 13, 2002)

- Compromise bill incorporating elements of the DeWine and Biden bills

The Protect Act (April, 2003)

- Created an 18-month pilot program to test various methods of obtaining criminal background checks on volunteers.
- Includes a study that will assess the nationwide and state criminal background check system
- Also enacted Amber Alert System
- Mandated a study that will make recommendations on how to ensure that human service organizations can promptly and affordably conduct these important checks

SafetyNet

- Launched August 15, 2003 by National Mentoring Partnership, as a result of Protect Act provisions
- Provides mentoring programs across the country with access to FBI background checks, at a cost of \$18 and with a 3-5 day turnaround time.

The NCPA Project (2001-2002)

A Collaborative Project of the Maine Department of Public Safety, Maine State Police, and the Muskie School of Public Service

- ☐ Explored the concerns, needs and potential barriers to implementing provisions of the NCPA in Maine
- ☐ Conducted focus groups with wide range of organizations
- ☐ Examined the approaches that other states are using to provide access of criminal history records to agencies working with vulnerable populations
- ☐ Included survey disseminated to 151 programs in Maine serving children, the elderly, and individuals with disabilities
- ☐ Identified recommendations for implementation of the provisions of the NCPA

Project Survey Results

- **81.5%** of respondents reported using volunteers in some or all of the direct services they provide

- **61.5%** of the respondent agencies indicated they have volunteers or employees who have unsupervised access to children (or youth), the elderly, or persons with disabilities
- **56.9%** of respondents reported their volunteers or employees have or have had supervisory or disciplinary authority over children
- **70%** of respondents reported that a State Criminal History Record check was a part of their screening process for employees and/or volunteers

A Sample of Survey Questions

Question:

Maine law currently provides for the release of only conviction data when responding to a request for a criminal history records check by a non-criminal justice entity. Should the law be amended to allow dissemination of additional information, such as arrest records or records of plea bargain arrangements?

Response:

- Definitely yes **58.5%**
- Perhaps **29.2%**
- Probably not **4.6%**

Question:

“Would you support a state law that *mandates* the use of fingerprint-supported national criminal history records checks for volunteers or employees who have unsupervised access to children (and youth), the elderly, or individuals with disabilities?”

Response:

- Definitely yes 35.4%
- Perhaps 40%
- Probably not 15.4%
- Definitely not 9.2%

Question:

“If Maine law were changed to allow more entities to *voluntarily* submit request for national checks, would you consider utilizing such checks as a part of your agency’s screening protocol?”

Response:

- Definitely yes **33.8%**
- Perhaps **52.3%**

- Probably not **9.2%**
- Definitely not **3.1%**
- No response **1.5%**

Question:

“What barriers might keep your organization from utilizing fingerprint-supported national criminal history background checks? (Check all that apply)”

Response:

- Costs **92.3%**
- Inconvenience to employees and/or volunteers **46.2%**
- Might deter employees/volunteers from applying to work in our agency **33.8%**
- Complex /cumbersome process **10.7%**
- Timeframes / timeliness of receiving results **6.1%**
- Other **4.6%**

“Take-Home” Thoughts for Consideration...

- **Always consider your recruitment program as the first step of screening**
 - Set out clear expectations and standards
- **Do not accept the notion that elevating your screening standards will necessarily scare away potential volunteer recruits**
 - Communicate the importance of the job being done, the need for high standards and why they are necessary
 - Be able to articulate clearly the benefits that volunteers will experience by participating in the program
 - Provide screening methods that will satisfy the “due diligence” standards, but use approaches that will make it as convenient as possible for volunteers.
- **Screen for the position!**
 - Agency policies should outline multi-step approach to screening and define parameters within which these levels are to be utilized
 - Screening for a particular position should clearly reflect the risks associated with that position (e.g., if volunteer is not going to work directly with clients, but is, for example, handling money, then that should be the focus of screening activities: (1) competency in financial matters and (2) record of integrity with regard to handling money)
- **Be aware of the limitations of Social Security/ Name Based Criminal History Record checks**
 - They have a high degree of false positives and false negatives
 - Maine-based checks will not include crimes committed in other states; given the mobility of our society, this is a serious limitation
- **Consider grants/ corporate sponsorship for funding to enhance screening activities**
 - An effective, thorough screening program not only protects the agency and the persons being served, it also protects the volunteer. These benefits can appeal to potential funding sources, and should be clearly defined.